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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

FILED/ACCEPTED

APR 17 2009

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Request for Review by AT&T Inc. of)
Decision of Universal Service)
Administrator)

WC Docket No. 03-109

REQUEST FOR REVIEW BY AT&T INC. OF
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR

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April 14, 2009

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**REQUEST FOR REVIEW BY AT&T INC. OF
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR**

I. STATEMENT OF INTEREST AND ISSUES

Pursuant to sections 54.719(c), 54.721 and 54.722 of the Commission's rules,¹ AT&T Inc., on behalf of its wholly owned subsidiaries Nevada Bell Telephone Company ("AT&T Nevada") and Pacific Bell Telephone Company ("AT&T California") (collectively, the "Companies"), hereby seeks review of Universal Service Administrative Company ("USAC") Management Responses to the following Independent Accountant's Reports: LI-2006-201 and LI-2006-204, which, respectively, summarized audits of AT&T Nevada's and AT&T California's compliance with federal low-income requirements from September 30, 2004 through September 30, 2005.² The same third-party auditing firm audited both affiliates and issued an identical finding for both carriers, which AT&T is appealing herein. Thus, for ease of

¹ 47 C.F.R. §§ 54.719(c), 54.721, 54.722.

² See Appendix A (Letter to Cathy Carpino, AT&T Services, Inc., from USAC, High Cost and Low Income Division (dated February 13, 2009) (attaching LI-2006-201 and USAC Management Response)); Appendix B ((Letter to Cathy Carpino, AT&T Services, Inc., from USAC, High Cost and Low Income Division (dated February 13, 2009) (attaching LI-2006-204 and USAC Management Response). See also Appendix C (Letter to Steven Ellis, Nevada Bell Telephone Company, from Pamela Gallant, USAC (dated June 24, 2008)); Appendix D (Letter to Steven Ellis, Pacific Bell Telephone Company, from Pamela Gallant, USAC (dated June 24, 2008)); Appendix E (Letter to Pamela Gallant, USAC, from Cathy Carpino, AT&T Services, Inc. (dated July 28, 2008)).

administrative review and efficiency, in this request for review, AT&T is appealing several findings applicable to one or both carriers. In particular, AT&T seeks review of USAC's erroneous conclusion that (1) it should recover toll limitation service ("TLS") support from AT&T California and AT&T Nevada because both carriers requested less TLS support than permitted; (2) AT&T Nevada was required to separately identify and advertise each of the services supported under section 54.101(a) of the Commission's rules³ in its Lifeline advertisements; and (3) AT&T Nevada was required to populate Line 9 of FCC Form 497 (Lifeline and Link-Up Worksheet) with partial or pro-rata dollars attributable to Lifeline subscribers who entered and/or left the Lifeline program during any given month, regardless of whether AT&T Nevada sought partial or pro-rata dollars from USAC.⁴ For the reasons provided below, AT&T requests that the Wireline Competition Bureau ("Bureau") or Commission reverse these incorrect audit findings.⁵

³ 47 C.F.R. § 54.101(a).

⁴ AT&T has filed requests for review before on two of the three issues presented in this request (Lifeline advertising and partial month reporting). *See* Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-109 (filed Jan. 7, 2008) (requesting review of the partial month reporting finding against AT&T Texas); Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, WC Docket No. 03-109 (filed Aug. 18, 2008) (requesting review of the Lifeline advertising and partial month reporting findings against AT&T Indiana, AT&T Kansas, and/or AT&T Oklahoma). The Commission sought and received comment on these prior requests and AT&T asks that the Commission incorporate by reference the record developed in response to AT&T's earlier submissions. AT&T notes that every single commenter supported AT&T's requests for review.

⁵ We note that there is no monetary value associated with two of the three audits findings. For the finding concerning TLS support, for which USAC has sought to recover TLS-related disbursements made during the audit period, the Companies sought less in TLS support than that to which they were entitled. If the Companies had used the TLS amounts contained in their state compliance filings during the audit period, they would have received over \$500,000 more, combined, than they in fact did. If the Commission grants AT&T's request for review, the Companies will not seek additional TLS for those prior months; thus, granting AT&T's request for review will have no financial impact on the universal service fund.

II. STATEMENT OF FACTS

All eligible telecommunications carriers (“ETCs”), such as the Companies, are required to provide discounts on the cost of receiving telephone service to qualifying low-income consumers.⁶ ETCs, in turn, are permitted to receive support from the federal low-income support mechanism for providing such discounts to such customers.⁷

Toll Limitation Service. According to the Commission’s rules, ETCs are reimbursed for providing toll limitation service to qualifying low-income consumers in an amount equal to the ETC’s incremental cost of providing either toll blocking or toll control, whichever is selected by the particular customer.⁸ Prior to, and during, the period covered by the audits, both Companies had on file with their respective state commissions cost studies establishing their recurring and/or non-recurring unit costs of providing TLS.⁹ For reasons unknown to current employees, for some period of time, both Companies sought TLS reimbursement from USAC for amounts lower than the actual TLS unit costs in their respective states.

Lifeline Advertising. The Commission’s rules require ETCs to “[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.”¹⁰ There are a number of benefits associated with Lifeline service, including free toll blocking, waivers of certain taxes and fees, and waiver of the subscriber line charge (“SLC”).

⁶ 47 C.F.R. § 54.405.

⁷ 47 C.F.R. § 54.407.

⁸ 47 C.F.R. §§ 54.403(c), 54.407(b). Toll blocking prevents the placement of all long distance calls for which the subscriber would be charged and toll control limits the toll charges a subscriber can incur during a billing period to a preset amount. See *Universal Service First Report and Order*, 12 FCC Rcd 8776, ¶ 383 (1997) (subsequent history omitted).

⁹ See Appendix E (attaching copies of state-filed cost support).

¹⁰ 47 C.F.R. § 54.405(b).

To date, neither the Commission's rules nor its orders detail the information that must be included when an ETC publicizes the availability of Lifeline service. The independent auditor reviewing AT&T Nevada's compliance with the federal low-income rules found that it had failed to offer toll blocking to Lifeline subscribers and to specifically identify toll blocking in its Lifeline advertising.¹¹ In its management response, USAC stated that ETCs "are required to advertise all services supported under 47 C.F.R. § 54.101(a)," and that it therefore concurred with the auditor's finding.¹²

Partial Month Reporting. In order to obtain reimbursement for discounts provided to Lifeline customers, ETCs are required to complete and file with USAC the Commission's monthly worksheet (FCC Form 497).¹³ This form provides fields for ETCs to report the monthly number of low-income subscribers for whom federal support is claimed.¹⁴ In addition, the instructions to this form state:

If claiming partial or pro-rata dollars, check the box on line 9. Enter the dollar amount (if applicable) for all partial or pro-rated subscribers. Amount should be reported in whole dollars, and may be positive or negative, depending on whether there are more new subscribers being added part way through a month or more subscribers disconnecting during the reported month. DO NOT include partial or pro-rata amounts on lines 5-8.¹⁵

The independent auditor selected by USAC to audit AT&T Nevada's compliance with the federal low-income requirements concluded that its practice of reporting all Lifeline

¹¹ Appendix A (Independent Accountant's Report for Nevada Bell, Attachment 3 at 7).

¹² *Id.*, USAC Management Response at 1.

¹³ FCC Form 497 and instructions available at:
<http://www.universalservice.org/li/telecom/step06/form497.aspx>.

¹⁴ See Lines 5(a) (for Tier 1 support), 6(a) (for Tier 2 support), 7(a) (for Tier 3 support), and 8(a) (for Tier 4 support).

¹⁵ See Instructions for Lifeline and Link-Up Worksheet at 4.

subscriber counts using Lines 5-8 was incorrect, and that AT&T Nevada was required to report on Line 9 any Lifeline subscribers who begin or terminate service during any given month.¹⁶ As noted in the Independent Accountant's Report, AT&T Nevada uses its billing systems to capture the number of Lifeline subscribers at the end of each month and reports this figure in its FCC Form 497 filings. The auditor recommended that AT&T Nevada "take into account the partial (i.e., pro rata) Lifeline discounts given to subscribers who entered and left the Lifeline program when determining the amount of Lifeline support claimed on the FCC Form 497 each month."¹⁷ In its Management Responses, USAC concurred with the auditor's recommendation and concluded that ETCs are required to use Line 9 if they gain or lose Lifeline customers mid-month.¹⁸

In support of its assertion that the Commission does not require ETCs to use Line 9, AT&T Nevada explained that, in September 2004, the Commission announced that it was amending FCC Form 497 to require ETCs to report the number of Lifeline subscribers receiving federal support for part of the month and the number of service days those subscribers received support.¹⁹ The revised form was to take effect on October 15, 2004. After release of this Public Notice, many carriers, including representatives of AT&T, met with Bureau staff to express opposition to this new requirement because of their inability to track and calculate pro-rata support attributable to subscribers who obtain Lifeline service for only part of a month. In

¹⁶ Appendix A (Independent Auditor's Report for Nevada Bell, Attachment 3 at 8-10).

¹⁷ *Id.*, Independent Auditor's Report for Nevada Bell, Attachment 3 at 9.

¹⁸ *Id.*, USAC Management Response at 2.

¹⁹ See *Wireline Competition Bureau Announces Effective Date of Revised Form 497 Used to File Low Income Claims with USAC*, WC Docket No. 03-109, Public Notice, DA 04-3016 (rel. Sept. 21, 2004). See Appendix F (copy of the revised instructions and form that were supposed to take effect on October 15, 2004).

response to ETC concerns about the revised form, the Commission delayed, and later suspended indefinitely, adoption of the new form.²⁰

III. ARGUMENT

A. **It Is Inappropriate for USAC to Recover Toll Limitation Service Reimbursements Because the Companies Requested Less Support Than Permitted and Such a Recovery Is Inconsistent with Commission Rules.**

Both Companies have incremental cost studies establishing their unit costs for TLS that were on file with the relevant state commission prior to and during the audit period (i.e., September 30, 2004 to September 30, 2005). AT&T has previously provided to USAC documentation supporting these incremental costs.²¹ USAC not only refuses to accept such documentation (because they establish that AT&T's incremental costs were *higher* than the costs that the Companies used in their FCC Form 497 filings) but also seeks to recover all of the TLS support payments made to the Companies during the audited months on the ground that those payments were different from the Companies' costs of providing TLS service.²² In other words, because the Companies sought approximately \$519,000 less in TLS reimbursements than they were entitled to, USAC has concluded that the Companies should be required to repay all of the approximately \$490,000 in TLS support that USAC disbursed to the Companies for these months.

²⁰ *Wireline Competition Bureau Announces Delayed Effective Date for Revised Form 497 Used for Low-Income Universal Service Support*, WC Docket No. 03-109, Public Notice, DA 04-3188 (rel. Oct. 4, 2004); *Wireline Competition Bureau Announces Delayed Effective Date for Revised Form 497 Used for Low-Income Universal Service Support Until Further Notice*, WC Docket No. 03-109, Public Notice, DA 05-604 (rel. Mar. 4, 2005).

²¹ See Appendix E.

²² See Appendices A & B.

Had the Companies sought *more* in TLS reimbursements than they should have, it would of course make sense for USAC to recover the difference. Indeed, recovery of funds under that circumstance is consistent with Commission precedent. In its *USAC Program Management Order*, the Commission found that recovery of funds is appropriate for all of its universal service programs under the circumstances described in its *Schools and Libraries Fifth Report and Order*.²³ One such example of a rule violation warranting recovery of funds is when an applicant fails to calculate properly its appropriate discount rate. In that instance,

the amount disbursed in violation of this rule is the difference between the amount of support to which the beneficiary is legitimately allowed and the amount requested or provided. For instance, in a situation in which the beneficiary made a clerical error in calculating the level of participation in the school lunch program, or failed to use an approved methodology for calculating the level of school lunch participation, *the beneficiary may legitimately receive support under a recalculated discount rate. In these circumstances, the amount to recover is the difference between the incorrectly calculated amount and the amount recalculated with the appropriate discount.*²⁴

The Companies' use of undocumented – and lower – TLS incremental costs during the audited months was plainly a clerical error. Under Commission precedent, the remedy for such a clerical error is to recalculate the amount of support to which the Companies are legitimately allowed. If USAC were to perform such a recalculation, the Companies would be entitled to receive significantly more in TLS reimbursements than they originally requested.²⁵ Moreover, even if

²³ *USAC Program Management Order*, 22 FCC Rcd 16372, ¶ 30 (2008) (“Consistent with our conclusion regarding the schools and libraries program, funds disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of a Commission rule that implements the statute or a substantive program goal should be recovered” citing the *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd 15803, ¶¶ 18-30 (2004) for examples of rule violations for which recovery should be sought).

²⁴ *Schools and Libraries Fifth Report and Order*, ¶ 27 (emphasis added).

²⁵ While AT&T is not requesting that USAC recalculate the amount of the Companies' TLS reimbursement in order to provide it additional TLS support, if the Commission denies AT&T's request for review, AT&T will revise its FCC Form 497 filings for the audited months to include the higher TLS incremental costs. If USAC rejects those revisions because they were made later than twelve months after the data month for which the revision applies, AT&T will appeal that decision too since that

the Companies had sought more in TLS support than allowed, which they did not, the appropriate response would have been for USAC to recover the “difference between the incorrectly calculated amount and the amount recalculated with the appropriate [TLS incremental costs]” and not all of the TLS support provided during that period of time. Simply put, nothing in the Commission’s orders or rules authorizes USAC to seek recovery of *all* TLS support payments when an ETC makes such an obvious clerical error, particularly where, as here, the amount sought by the ETC was *less* than the amount to which it was entitled. USAC’s erroneous finding therefore must be rejected.

B. ETCs Are Not Required to Advertise Toll Blocking and All Other Supported Services in Rule 54.101(a) When Publicizing the Availability of Lifeline Service.

The Commission should reject USAC’s incorrect conclusion that ETCs are required to advertise all of Rule 54.101(a)’s supported services when publicizing the availability of Lifeline service, pursuant to Rule 54.405(b).²⁶ The Commission’s rules do not require ETCs to advertise or otherwise publicize the availability of free toll blocking specifically, or the other services and/or functionalities that must be provided with Lifeline service (e.g., dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent).²⁷ Rather,

arbitrary deadline is not contained anywhere in the Commission’s rules or orders and its inclusion in the instructions to the FCC Form 497 does not appear to have been subject to prior notice and comment. In fact, the Commission and its Inspector General have issued orders and reports containing statements that contradict the existence of such a deadline. *See, e.g., VCI Company Notice of Apparent Liability*, 22 FCC Rcd 15933 (2007) (directing a carrier to file revised FCC Forms 497 from August 2004 to August 2007); *Assessment of Payments Made under the Universal Service Fund’s Low Income Program*, 2008 WL 5205212, Office of Inspector General Federal Communications Commission at 5-6 (rel. Dec. 12, 2008) (“Carriers may file an original and revised Form 497 for up to 25 months after the ‘data month’ depending on the time of year. Moreover, once filed, a claim may be revised for 15 to 25 months depending upon the time of year”).

²⁶ Appendix A (USAC Management Response at 1).

²⁷ 47 C.F.R. § 54.101(a).

the rules require only that an ETC “[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.”²⁸ It is therefore incorrect to interpret this rule as requiring an ETC to specifically enumerate and/or explain each of the benefits of Lifeline service (such as benefits relating to the SLC, toll restriction, certain taxes and fees, and additional Tier Two discounts) or explain that single-party service, among the other supported services, is included at no cost to Lifeline subscribers in media of general distribution.²⁹

The Commission’s rationale for establishing its Lifeline advertising rule was to increase awareness of and, therefore, participation in the Lifeline program.³⁰ It is appropriate to question how mentioning free single-party service, for example, would increase participation in the Lifeline program. To the contrary, one can only imagine the confusion that would ensue if ETCs had to mention in their Lifeline radio and print advertisements that a Lifeline subscriber’s service includes toll blocking, and such other features as “dual tone multi-frequency signaling or its functional equivalent” and “voice grade access to the public switched network.”³¹ But, if USAC is correct that an ETC must identify TLS in its advertising, then it also would be required to identify those other services as well, confusing low-income customers and potentially suppressing participation in the Lifeline program.

²⁸ 47 C.F.R. § 54.405(b).

²⁹ The Commission’s order establishing this rule says nothing about requiring ETCs to advertise the nine supported services in Rule 54.101(a) in order to meet their obligation to publicize the availability of Lifeline service. *See Lifeline and Link-Up Twelfth Report and Order*, 15 FCC Rcd 12208, ¶¶ 76-80 (2000). Indeed, the Commission goes out of its way to say that it is not prescribing “specific, uniform methods by which [ETCs] must publicize the availability of Lifeline and Link-Up support.” *Id.* at ¶ 79.

³⁰ *Id.* at ¶ 76.

³¹ 47 C.F.R. § 54.101(a).

C. ETCs Are Not Required to Report Partial Month Lifeline Subscribers on Line 9 of FCC Form 497.

The Commission should reject USAC's erroneous conclusion that ETCs are *required* to use Line 9 of FCC Form 497 to report the numbers of Lifeline subscribers who began and ended Lifeline service during any given month. USAC's interpretation of the Commission's instructions to the form is clearly at odds with the Commission's deliberate decision *not* to require ETCs to do just that. By suspending indefinitely the proposed revision to FCC Form 497 that would have required all ETCs to track the precise start and stop date of every Lifeline subscriber and to calculate pro-rated support for each of these subscribers, the Commission acknowledged that many, or perhaps, most ETCs simply do not have any mechanized ability to do so. Plainly, if the Commission had intended to require, rather than permit, ETCs to seek pro-rated support for Lifeline subscribers who take service for only a part of a month, it would have adopted the new form. The fact that it did not do so establishes that there currently is no requirement that carriers use Line 9 of the form to separately report and seek pro-rated support for such customers.

USAC contends that the Commission declined to adopt its new form requiring ETCs to separately state partial month Lifeline subscribers because its proposed formula was too complicated but that the Commission has always intended Line 9 to be mandatory when an ETC has a single Lifeline subscriber who begins or ends service during the month.³² Such an assertion has no merit and is contrary to the plain reading of the Commission's instructions, which state "*If claiming partial or pro-rata dollars, check the box on line 9.*"³³ Indeed, AT&T

³² See Appendix A (USAC Management Response at 1-2).

³³ Instructions for Lifeline and Link Up Worksheet at 4 (emphasis added). See also FCC Form 497 (directing ETCs to "[c]heck box to the right if **partials** or **pro rata amounts** are used." Emphasis in original).

Nevada (and all other ETCs) would have to ignore this sentence of the instructions, and the form itself, for USAC's interpretation to have any validity. USAC does not and cannot cite to any Commission precedent to support its view since the Commission has never discussed in any of its orders the manner in which ETCs should report such Lifeline subscribers.³⁴ The language of the current instructions and form has been in effect since October 2000. If the Commission were concerned about how ETCs were reporting Lifeline subscribers who began or ended service during the month, it has had over eight years within which to act. There can be no question that, for over four years, the Bureau has been aware that numerous large ETCs follow AT&T Nevada's practice of using Lines 5 through 8, and not 9, to report all of its Lifeline subscribers but has chosen not to mandate partial month reporting.

The auditor and USAC do not suggest, nor can they, that, by not using Line 9 to report subscribers obtaining partial monthly support, AT&T Nevada is somehow profiting from its participation in the Lifeline program. Based on its experience, AT&T Nevada has no reason to believe that it has more Lifeline subscriber-days associated with subscribers who drop their service during a month than Lifeline subscriber-days associated with subscribers who add Lifeline service during the month (or vice versa). AT&T Nevada counts the number of Lifeline subscribers it has in its billing systems at the end of the month (e.g., 30th or 31st). If, for example, AT&T Nevada provides service to a Lifeline customer from the first of the month through the 29th of the month, when the customer disconnects his or her service, it would not include that particular customer in its monthly FCC Form 497 filing even though it provided discounted Lifeline service to that particular subscriber for almost the entire month. In other

³⁴ USAC merely cites to Rule 54.407(c), which requires ETCs to maintain accurate records of the revenues they forgo in providing Lifeline service. 47 C.F.R. § 54.407(c). See Appendix A (USAC Management Response at 2).

words, for that customer, AT&T Nevada would have provided the Lifeline subsidy but would not have sought reimbursement from USAC for that customer. On the other hand, if it begins providing Lifeline service to a new subscriber sometime after the first of the month and continues providing service through the end of the month, it would include that customer in its monthly count and would receive the full reimbursement for that subscriber.

Obviously, AT&T Nevada has little control over when a Lifeline customer begins and terminates his or her service during the month. AT&T Nevada processes Lifeline subscriber additions and deletions throughout the month in the normal course of business and, as a result, AT&T's contention that, over time, the amount of support claimed in its FCC Form 497 filings for those partial month subscribers "comes out in the wash" is correct.

As noted above, AT&T Nevada uses its billing systems to obtain the number of subscribers receiving the Lifeline discount at the end of each month. In order for it to separately track the number of Lifeline subscribers who begin and end their service during the month, at a minimum, AT&T Nevada would have to analyze daily data from its billing systems. It would then have to calculate the pro-rated support for each subscriber, which could be a significant undertaking. Moreover, based on AT&T's experience, these numbers are not static as USAC seems to suggest.³⁵ Even if it were feasible to report partial month subscribers, and AT&T Nevada is not conceding that it is, such a task would be extremely burdensome and, thus, AT&T Nevada has chosen not to claim partial support by populating Line 9 on the FCC Form 497.

If the Commission decides to revisit the issue of requiring all ETCs to report partial month Lifeline subscribers, it must do so through notice and comment so that AT&T and all other interested parties may explain in detail any technical or administrative impediment to

³⁵ See Appendix A (USAC Management Response at 2) ("A company might have months in which it neither lost nor gained Lifeline customers.").

complying with such a new proposed requirement. The Bureau has no authority to impose this new requirement on AT&T alone and certainly should not do so in the context of an audit. The Commission therefore should reject USAC's conclusion in response to this issue.

IV. CONCLUSION

For the reasons provided above, AT&T respectfully requests the Commission to reject USAC's incorrect Management Responses and find that (1) the Companies' use of lower, incorrect TLS incremental costs was a clerical error for which no recovery of funds is warranted; (2) AT&T Nevada was not required to advertise or otherwise publicize the availability of free toll blocking specifically, or the other services and/or functionalities that must be provided with Lifeline service in media of general distribution; and (3) AT&T Nevada's practice of reporting all Lifeline subscribers on Lines 5 through 8 is permissible.

Respectfully Submitted,

/s/ Cathy Carpino

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April 14, 2009

Its Attorneys

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054**

In the Matter of

Request for Review by AT&T Inc.
of Decision of Universal Service
Administrator

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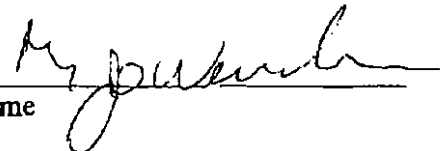
WC Docket No. 03-109

DECLARATION OF MARY JO WENCKUS

I, Mary Jo Wenckus, do hereby, under penalty of perjury, declare and state as follows:

1. My name is Mary Jo Wenckus. I am a Senior Product Marketing Manager with AT&T Operations, a wholly owned subsidiary of AT&T Inc. In that capacity, I was and am familiar with the terms by which AT&T-Nevada has completed FCC Form 497 filings, including how it has reported Lifeline subscribers on this form.
2. In accordance with Commission rules, 47 C.F.R. § 54.721(b)(2), I have reviewed the factual assertions set forth in the appeal and hereby certify that they are true and correct to the best of my knowledge.

Name



Dated: 4-14-2009

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054**

In the Matter of

Request for Review by AT&T Inc.
of Decision of Universal Service
Administrator

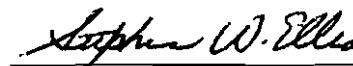
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WC Docket No. 03-109

DECLARATION OF STEPHEN W. ELLIS

I, Stephen W. Ellis, do hereby, under penalty of perjury, declare and state as follows:

1. My name is Stephen W. Ellis. I am a Lead Cost Accountant with AT&T Services, Inc., a wholly owned subsidiary of AT&T Inc. In that capacity, I was and am familiar with the terms by which AT&T-California and AT&T-Nevada have completed FCC Form 497 filings, including how they have reported Lifeline subscribers on this form.
2. In accordance with Commission rules, 47 C.F.R. § 54.721(b)(2), I have reviewed the factual assertions set forth in the appeal and hereby certify that they are true and correct to the best of my knowledge.



Name

Dated: 4/10/09

APPENDIX A



Universal Service Administrative Company

High Cost & Low Income Division

Via Certified Mail Return Receipt Requested

February 13, 2009

Cathy Carpino
AT&T Services, Inc.
1120 20th Street, NW
Suite 1000
Washington, DC 20036

RE: Recovery for TLS Audit Finding for Nevada Bell Telephone Company

Dear Ms. Carpino:

As you are aware, the auditors who conducted the audit of Nevada Bell Telephone Company (SAC 555173) on behalf of the Federal Communications Commission (FCC) found an instance of non-compliance with the FCC's rules governing the Low Income universal service program. A copy of the final audit report is attached for your reference.

The auditors found that Nevada Bell did not maintain records to document the company's incremental cost of providing Toll Limitation Service (TLS) to its Lifeline customers during the months audited (October 2004 and April 2005). Specifically, the auditors found that Nevada Bell did not have documentation to support the rate of \$3.56 claimed for 331 subscribers in October 2004 and for 357 subscribers in April 2005. The total amount of TLS support claimed for these months was \$2,449.00.

On June 24, 2008, USAC sent a letter to Nevada Bell requesting that the company submit documentation to substantiate the rates claimed for TLS support for October 2004 and April 2005. In response, the company submitted documentation of Nevada Bell's non-recurring TLS unit cost of \$6.77, which was filed in 1996 as part of a rate case with the Nevada Public Utilities Commission. USAC management has concluded that the documentation submitted by Nevada Bell does not support the TLS rates claimed by the company for the months audited. Because the company cannot provide documentation that substantiates the costs associated with the specific rates claimed during 2004 and 2005, USAC will recover the TLS support provided during October 2004 and April 2005.

In sum, USAC will recover \$2,449.00 in overpayments from Nevada Bell's April 2009 low income support payment, which will be disbursed at the end of May 2009. If this amount exceeds the amount of support due to Nevada Bell, USAC

will continue recovering the overpayment amount against subsequent months' support disbursements until all recoveries are complete. In the event Nevada Bell becomes no longer eligible to receive Low Income support, USAC will issue an invoice for the balance owed.

If you wish to appeal this decision to the FCC, the appeal must be filed within 60 days of the date of this letter. Additional information about the appeals process may be found on USAC's web site at www.universalservice.org/li/about/filing-appeals.

Sincerely,

USAC

Enclosure

THOMPSON, COBB, BAZILIO & ASSOCIATES, PC
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Independent Accountant's Report
LI-2006-201

Nevada Bell
525 Market Street, 19th Floor #21
San Francisco, CA 94105

Universal Service Administrative Company
2000 L Street, N.W.
Suite 200
Washington, D.C. 20036
Attn: Internal Audit

Federal Communications Commission:
445 12th Street SW
Washington, DC 20554
Attn: Inspector General

We have examined management's assertions (Attachment 1) included in their letter dated March 3, 2007, that Nevada Bell (Study Area Code 555173) complied with the applicable program requirements of 47 C.F.R. Section 54 of the Federal Communications Commission's Rules and Regulations and Related Orders identified in Attachment 2, relative to disbursements of \$1,616,267.00 for Low Income Program Support services made from the Universal Service Fund during the fiscal year ended September 30, 2005. Nevada Bell's management is responsible for compliance with those requirements. Our responsibility is to express an opinion on management's assertions about Nevada Bell's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence about Nevada Bell's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on Nevada Bell's compliance with specified requirements.

In conducting our examination we found material deviations from program requirements of 47 C.F.R Section 54 of the Federal Communications Commission's Rules and Regulations and Related Orders. First, Nevada Bell did not have documentation supporting the incremental cost of providing toll limitation services as claimed on Form 497 for the sample months of October 2004 and April 2005, a violation of 47 C.F.R. §54.417(a) recordkeeping requirements. Second, Nevada Bell did not comply with 47 C.F.R. §54.401(a)(3), which requires that carriers offer toll limitation to all qualifying low-income consumers at the time they subscribe to Lifeline service. Third, Nevada Bell was not determining pro rata discounts for Lifeline customers who were eligible for only partial months. Detailed information relative to these instances of material noncompliance is described in Attachment 3.

In our opinion, except for the material deviations from the criteria described in the preceding paragraph, management's assertions that Nevada Bell complied with the aforementioned requirements relative to disbursements of \$1,616,267.00 for low income support services made from the Universal Service Fund for the fiscal year ended September 30, 2005, are fairly stated, in all material respects.

This report is intended solely for the information and use of Nevada Bell, the Federal Communications Commission of the United States of America and the Universal Service Administrative Company and is not intended to be and should not be used by anyone other than these specified parties.

Washington, DC
April 5, 2007

Thompson, Calt, Bagilio & Associates, P.C.

Attachment 1

**AT&T Assertion Letter for Study Area Codes
545170 (Pacific Bell), 445216 (Southwestern Bell - Texas), 315080 (Indiana Bell), 415213
(Southwestern Bell - Kansas), 435215 (Southwestern Bell - Oklahoma) and 555173 (Nevada Bell)**

**Report of Management on Compliance with Applicable Requirements of 47 C.F.R. Section 54 of the
Federal Communications Commission's Rules, Regulations and Related Orders**

Management of AT&T is responsible for ensuring that the carrier is in compliance with applicable requirements of the Federal Communications Commission (FCC) rules at 47 C.F.R. §§ 54.101, 54.201 -- 54.209, and 54.400 -- 54.417 as well as related FCC Orders.

Management has performed an evaluation of the carrier's compliance with the applicable requirements of FCC rules at 47 C.F.R. §§ 54.101, 54.201 -- 54.209, and 54.400 -- 54.417, and related FCC Orders with respect to providing discounts to eligible low income consumers and seeking reimbursement from the Universal Service Fund (USF) during the year ended September 30, 2005.

AT&T makes the following assertions with respect to Low Income Program reimbursements received from the USF for Study Area Codes listed above for year ended September 30, 2005:

A. Carrier Eligibility - AT&T asserts that it:

- i. is an eligible telecommunications carrier (ETC) that provides the services that an eligible carrier must offer to receive federal universal service support. (See the attached documents/orders showing ETC status for each of the six states.)
- ii. makes available Lifeline service, as defined in 54.401, to qualifying low-income consumers.

B. Advertising Supported Services: AT&T asserts that it publicizes the availability of supported services in a manner reasonably designed to reach those likely to qualify for Lifeline and Toll Limitation Support services.

C. Rate verification - AT&T asserts that it:

- i. provides discounts to qualifying subscribers for Lifeline service:
 - i. Tier 1: Available to all eligible Lifeline subscribers equal to the incumbent Local Exchange Carrier's (ILEC's) actual federal tariffed subscriber line charge.
 - ii. Tier 2: \$1.75 per month available to qualified low-income consumers, if the carrier received any non-federal approvals necessary to implement the required rate reduction and passes through the full amount of Tier 2 support to the qualifying low-income consumer.
 - iii. Tier 3: An additional amount of federal Lifeline support equal to one-half the amount of any State-mandated Lifeline support, or one half of any Lifeline support provided by the Service Provider, up to a maximum of \$1.75 per month.
 - iv. Tier 4: Additional federal Lifeline support of up to \$25 per month to eligible residents of tribal lands, as defined in § 54.400 (e), as long as the amount does not bring the basic local residential rate below \$1 per month per qualifying low-income subscriber.
- ii. provides discounts to qualifying subscribers for Link Up service:

Attachment 2

**Federal Communications Commission's 47 C.F.R. Part 54 Rules and Related Orders with
which Compliance was Examined**

Carrier Eligibility:

Section 54.101 (a)

Section 54.201 (a)

Section 54.405 (a)

Advertising Supported Services:

Section 54.201 (d) (2)

Section 54.405

Rate Verification:

Section 54.101 (9)

Section 54.401 (c)

Section 54.403 (a) (1)

Section 54.403 (a) (2)

Section 54.403 (a) (3)

Section 54.403 (a) (4)

Section 54.403 (c)

Section 54.407

Section 54.411 (a) (1)

Section 54.411 (a) (3)

Section 54.417 (a)

Federal-State Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶¶ 385-389 (1997))

Consumer Qualifications:

Section 54.410

Submission of FCC Form 497:

Section 54.407

General Recordkeeping:

Section 54.417 (a)

In the Matter of Lifeline and Link-Up, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, ¶ 40 (2004)

Attachment 3

Comment One Toll Limitation Services Cost--Section 54.417(a) Noncompliance

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|-----------------------------|---|
| Condition | For this audit, Nevada Bell did not provide documentation supporting the incremental cost of providing toll limitation services (TLS) as claimed on Form 497 for the sample months of October 2004 and April 2005. A rate of \$3.56 for TLS nonrecurring costs was claimed for each of 331 subscribers for whom TLS was initiated in October 2004 (the total claimed was \$1,178) and 357 subscribers for whom TLS was initiated in April 2005 (the total claimed was \$1,271). |
| Criteria | Section 54.417(a) of 47 C.F.R. of the Federal Communications Commission's Rules and Regulations and Related Orders requires that eligible telecommunications carriers must maintain records to document compliance with all Commission and state requirements governing the Lifeline/Link Up programs for three full preceding calendar years and provide that documentation to the Commission or USAC Administrator upon request. |
| Cause | According to Nevada Bell, documentation (e.g., a cost study) supporting the rate of \$3.56 for the nonrecurring costs of TLS claimed on Form 497 for October 2004 and April 2005 was not available. |
| Effect | We could not determine whether the total TLS dollars claimed on Form 497 for the sample months of October 2004 and April 2005 were accurate. |
| Recommendation | We recommend that Nevada Bell take steps to ensure that all records, including documentation supporting the incremental cost of providing TLS, needed to document compliance with all Commission and state requirements governing the Lifeline/Link Up programs are maintained for three full preceding calendar years and provided to the Commission or USAC Administrator upon request. |
| Beneficiary Response | The TLS rate (nonrecurring only) claimed on the Form 497 for October 2004 and April 2005 was based on previously completed cost studies, the details of which could not currently be located. In 2005, Nevada Bell updated its cost studies for the incremental cost of providing toll limitation services and began using the updated rates (both recurring and nonrecurring) on the Form 497 effective in January 2006. The new nonrecurring rate of \$6.77 is higher than the rate claimed for October 2004 and April 2005 of \$3.56 for the nonrecurring costs. Had the updated study results been used for the aforementioned months, the TLS dollars claimed would have been \$2k higher. |